

EXHIBIT 1

Excerpts from Deposition of Pittsburgh Police Officer, Louis Schweitzer
Pages 14-15, 32-47, 65, 87-90, 95-98

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT
OF PENNSYLVANIA

* * * * *

LENA DAVENPORT, an *
adult individual, *

Plaintiff

vs.

* CIVIL ACTION NO.

* 2:13-cv-00250-DSC

BOROUGH OF *

HOMESTEAD, a *

Municipal *

Corporation; CITY *

OF PITTSBURGH, a *

Municipal *

Corporation; IAN *

STRANG, *

* DEPOSITION OF

* ~~LOUIS SCHWEITZER~~

* November 8, 2013

individually and in *

his official *

capacities as a *

Police Officer of *

the Borough of *

Homestead, *

ORIGINAL

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JAMES ILGENFRITZ, *
individually and *
in his official *
capacities as a *
Police Officer of *
the Borough of *
Homestead, *
LOUIS SCHWEITZER, *
individually and *
in his official *
capacities as a *
Police Officer of *
the City of *
Pittsburgh, *
STEVEN MATAKOVICH, *
individually and *
in his official *
capacities as a *
Police Officer of *
the City of *
Pittsburgh, *

DEPOSITION OF
LOUIS SCHWEITZER
November 8, 2013

CALVIN KENNEDY, *

individually and *

in his official *

capacities as a *

Police Officer of *

the City of *

Pittsburgh, *

THOMAS GORECKI, *

individually and *

in his official *

capacities as a *

Police Officer of *

the City of *

Pittsburgh, and *

NATHAN HARPER, in *

his official *

capacity as a *

Chief of Police of *

the City of *

Pittsburgh, *

Defendants *

DEPOSITION OF

LOUIS SCHWEITZER

November 8, 2013

DEPOSITION

OF

LOUIS SCHWEITZER, taken on behalf of
the Plaintiff herein, pursuant to the
Rules of Civil Procedure, taken before
me, the undersigned, Danielle S. Ohm,
a Court Reporter and Notary Public in
and for the Commonwealth of
Pennsylvania, at the law offices of
Lewis, Lewis and Reilly, 1040 Fifth
Avenue, Pittsburgh, Pennsylvania, on
Friday, November 8, 2013 beginning at
10:00 a.m.

1 A. Yes.

2 Q. You'd never discharged your gun,
3 prior to that?

4 A. Well, other than putting down
5 deer, no.

6 Q. Okay. How many times did you
7 discharge your weapon on the night in
8 question?

9 A. To the best of what I remember,
10 four times.

11 Q. Okay. And can you tell me what
12 you discharged your weapon ---?

13 Excuse me, can you tell me at what or
14 whom you discharged the weapon?

15 A. At the driver of a dark-colored
16 Buick.

17 Q. Dark-colored Buick? And could
18 you tell me where you shot, as far as
19 the location, using the vehicle
20 primarily as the point of reference?

21 A. Can you ---?

22 Q. Tell me where you aimed, and
23 use the vehicle to describe the point
24 you were aiming?

25 A. The first two, ---

1 approximately two to three shots would
2 have been at the driver's side
3 windshield. And the final shot would
4 have been through the right rear
5 passenger window.

6 Q. Right rear ---? The vehicle
7 was past you at that time?

8 A. It was in the --- it was
9 passing --- not past me, but it was
10 next to me.

11 Q. It was next to you?

12 A. Yes.

13 Q. How far away was it from you?

14 A. I don't remember exactly, but a
15 couple of feet.

16 Q. A couple feet?

17 A. Approximately.

18 Q. And did you see the right rear
19 window shatter?

20 A. I don't remember.

21 Q. Okay. Did you see any
22 passengers in the vehicle?

23 A. No.

24 Q. Had there been any shots fired
25 before your shots?

1 long?

2 A. Inbound was stopped at 17th and
3 Carson.

4 Q. Did you know about this chase?

5 A. I'd heard over my radio on
6 Channel Two that Homestead was in
7 pursuit of a vehicle?

8 Q. Homestead?

9 A. Yeah.

10 Q. When you shot at this car, did
11 you have any information as to what
12 make it was or what color?

13 A. I remember it being a Buick. I
14 don't remember a color.

15 Q. You don't remember knowing the
16 color or any information you had? Is
17 that correct?

18 A. Not to what I remember what
19 now. No.

20 Q. Okay. Now you testified you
21 didn't remember the color of the
22 vehicle. You didn't have the license
23 plate; did you?

24 A. No.

25 Q. You also testified that you

1 didn't know the speed of the vehicle;
2 did you?

3 A. No.

4 Q. I mean, you did testify you
5 didn't know? It's a confusing
6 question.

7 A. Yes, I do ---.

8 Q. At the preliminary hearing you
9 said you didn't know that make of the
10 car, the color of the car or the speed
11 of the car? Isn't that right?

12 A. Yes.

13 Q. Okay. And your testimony at
14 the preliminary hearing was an order
15 at the city court? You have to say
16 yes. You can't ---.

17 A. Yes. Sorry.

18 Q. And the District Attorney
19 talked to you before you testified at
20 that hearing; did she not?

21 A. Yes.

22 Q. And that was Ms. Necessary?
23 Janet Necessary? Do you know her?

24 A. No. This is the first case I
25 think I've ever been involved with

1 her, as far as I know.

2 Q. So the car was about 25 yards
3 away, and it was in the outbound lane?

4 A. Yes.

5 Q. There was no traffic in that
6 lane, because it had been stopped; is
7 that right?

8 A. Yes.

9 Q. And you were standing at the
10 intersection of 17th ---?

11 A. 17th and East Carson.

12 Q. Okay. And you were standing in
13 the inbound lane?

14 A. Yes.

15 Q. And there were cars in front of
16 you, because you'd stopped them; is
17 that right?

18 A. Yes.

19 Q. Okay. And after you first saw
20 that car 25 yards away, you first saw
21 it, did you immediately take out your
22 weapon?

23 A. No.

24 Q. How long did you wait before
25 you took out your weapon?

1 A. Approximately, one to two
2 seconds.

3 Q. One to two seconds? All right.
4 And is your weapon holstered with a
5 snap holster top? Or is it secured
6 with a snap holster top or is it
7 simply open? You can pull it right
8 out?

9 A. There's retention on the
10 holster. You have to defeat the
11 retention to remove the pistol out of
12 it's ---.

13 Q. Can you explain what kind of
14 retention it is?

15 A. There's a leather strap over
16 the end of the slide of the pistol.
17 And you have to press a button with
18 your thumb, straight down, which
19 releases the leather strap. And then,
20 at the same time, you have to push it
21 forward, to remove the pistol.

22 Q. So you did that?

23 A. Yes.

24 Q. And by that time, how far was
25 the car away at that time?

1 A. I'd say approximately 15 to 20
2 yards at that point.

3 Q. Fifteen (15) to 20 yards? And
4 had it collided with anybody at that
5 point?

6 A. Not that I saw, no.

7 Q. Have you read the reports to
8 determine whether it collided with
9 anybody at that point?

10 A. I don't believe it did. No.

11 Q. Okay. Now you have your gun
12 out and just tell me the process in
13 your mind. You had your gun out ---?

14 A. At that point, I was scared and
15 I thought I was going to die. And I
16 was concerned for the pedestrians.
17 There was a large amount of
18 pedestrians at the bars. It was an
19 unseasonably warm night. And then, at
20 that point, that's when I ---?

21 Q. And you thought you were going
22 to die? So could you see how far away
23 was the car when you squeezed the
24 trigger for the first time?

25 A. I don't remember, exactly.

1 Q. Could you see ---? You said
2 you shot at the driver? Is that
3 right?

4 A. Yes.

5 Q. Did you see a driver in there?

6 A. I could see a person in the
7 driver seat, yes.

8 Q. Was it pretty well lit there at
9 the intersection of 17th and East
10 Carson?

11 A. There's street lights and
12 lights from the bars and businesses
13 and ---?

14 Q. Is the answer, yes, that you
15 could see inside the car?

16 A. I could see the silhouette of a
17 person in the driver's seat; yes.

18 Q. Okay. You couldn't see the
19 passenger?

20 A. I didn't see anybody else with
21 him.

22 Q. You never saw a passenger?

23 A. No.

24 Q. Okay. So what did you aim for
25 specifically?

1 A. Center mass of what I could
2 see, which would have been ---. I
3 don't really know how to describe him
4 in the body. I aimed for center mass
5 of, I guess, which would have been
6 upper chest.

7 Q. Upper chest? You could see his
8 upper chest?

9 A. Well, I could see the
10 silhouette of a person. I couldn't
11 see his exact upper chest. But, yeah.

12 Q. So you shot at him the first
13 time?

14 A. Yes.

15 Q. How far was the car at that
16 point? How far away?

17 A. When?

18 Q. When you shot?

19 A. Like, I said approximately, 15
20 to 20 yards away.

21 Q. Fifteen (15) to 20 yards? And
22 then how long did you wait to shoot
23 your second bullet?

24 A. Timewise, I have no idea. It
25 was as the vehicle passed me to my

1 right.

2 Q. As the vehicle passed to your
3 right, you shot your second bullet; is
4 that correct?

5 ATTORNEY CAMPBELL:

6 Wait.

7 ATTORNEY LEWIS:

8 Come on, come on, Bryan.

9 Okay, he wants to say ---
10 there's no objection.

11 ATTORNEY CAMPBELL:

12 Well, I'm just
13 objecting, because he said he
14 fired three shots and then as
15 the man ---

16 ATTORNEY LEWIS:

17 No, he didn't.

18 ATTORNEY CAMPBELL:

19 --- went by he
20 fired ---.

21 ATTORNEY LEWIS:

22 Oh, man, Brian. Why
23 don't you tell him what to
24 testify to? Go ahead.

25 ATTORNEY CAMPBELL:

1 Well, because you're
2 trying to trick him. That's
3 why.

4 ATTORNEY LEWIS:

5 I'm not trying ---. I'm
6 asking him to describe this
7 second ---.

8 ATTORNEY CAMPBELL:

9 You said the second
10 shot. And, ---

11 ATTORNEY LEWIS:

12 The second shot ---.

13 ATTORNEY CAMPBELL:

14 --- what he's referring
15 to is after it went by.

16 ATTORNEY LEWIS:

17 Okay, okay. I'm sorry.

18 ATTORNEY CAMPBELL:

19 Yes.

20 ATTORNEY LEWIS:

21 Do you want to say
22 anymore?

23 ATTORNEY CAMPBELL:

24 No.

25 ATTORNEY LEWIS:

1 Okay.

2 ATTORNEY CAMPBELL:

3 But I'm just saying, you
4 don't mislead a witness.

5 BY ATTORNEY LEWIS:

6 Q. Am I misleading you, Mr.
7 Schweitzer --- or Officer Schweitzer?
8 Did I mislead you right there when I
9 asked you when you shot the second
10 bullet?

11 A. The second bullet, the vehicle
12 would have still been in front of me
13 at that time.

14 Q. Is that what you want to clear
15 up?

16 A. I fired two to three times.

17 Q. Excuse me.

18 A. The vehicle was in front of me.

19 Q. Excuse me.

20 A. Okay.

21 Q. I'm asking about the second
22 bullet.

23 A. The second bullet, the vehicle
24 was still in front of me, traveling.

25 Q. Okay. And did you see the

1 passenger at that point?

2 A. I never saw a passenger in the
3 vehicle.

4 Q. Okay. Did you shoot the second
5 bullet?

6 A. Yes.

7 Q. Where'd you aim that bullet?

8 A. At the driver.

9 Q. Okay. And how far away was the
10 car at that point? Can you recall?

11 A. No.

12 Q. Okay. Now, you shot a third
13 time, as Mr. Campbell indicated. Is
14 that right?

15 A. Yes.

16 Q. Okay.

17 ATTORNEY HAMILTON:

18 Well, and he prior
19 indicated too, the witness
20 testified to that.

21 ATTORNEY KENNEDY:

22 I'll object to the form
23 of the question, as well.

24 ATTORNEY LEWIS:

25 Okay.

1 BY ATTORNEY LEWIS:

2 Q. They're objecting to the form
3 of the question. Did you shoot a
4 third shot?

5 A. Yes.

6 Q. Okay. Where was the car at
7 that point?

8 A. In front of me.

9 Q. The third shot was in front of
10 you, too?

11 A. To the best of what I remember,
12 yes.

13 Q. Okay. And where did you shoot
14 that?

15 A. At the driver.

16 Q. At the driver, the third time?

17 A. Yes.

18 Q. Okay. How far away was the car
19 when you shot the third time?

20 A. I don't remember.

21 Q. Okay. And as the car passed
22 you on the outbound lane, ---

23 A. Uh-huh (yes).

24 Q. --- you shot a fourth time;
25 didn't you?

1 A. Yes.

2 Q. Okay. So you did shoot four
3 times?

4 A. To the best of what I remember,
5 yes.

6 Q. Okay. And when you shot the
7 fourth time, you shot through the rear
8 window on the passenger side; is that
9 right?

10 A. It would have been the right
11 passenger window. Yes.

12 Q. Okay. And how far away was the
13 vehicle from you at that point?

14 A. Approximately, a couple feet.

15 Q. Okay. And you were still
16 standing, as you said, in the inbound
17 lane, about two, three feet from the
18 center line? Is that right?

19 A. Approximately, yeah.

20 Q. Okay.

21 A. I believe I moved to my left to
22 try to get out of the way of the
23 vehicle, so ---.

24 Q. You mean, as you started to
25 shoot you moved a little more to your

1 left? Is that right?

2 A. To the best of my memory, yes.

3 Q. And you had the traffic stopped
4 in front of you? Is that right?

5 A. Yes.

6 Q. Were you concerned at any time
7 that you might have the wrong ---
8 never mind. So the car went past you
9 after the fourth shot. What happened
10 to the car after that? Did you
11 observe it?

12 A. I lost sight of the vehicle
13 after that.

14 Q. What happened to the car after
15 that? Did you observe it?

16 A. I had lost sight of the vehicle
17 after that.

18 Q. You did?

19 A. After it passed me. Once, it
20 went beyond 16th Street.

21 Q. Well, did you see it go from
22 17th Street down to 16th Street?

23 A. Yes.

24 Q. And did it --- were there any
25 pedestrians in the roadway; at that

1 time?

2 A. To my left there was, yes.

3 Q. To your left?

4 A. Yes.

5 Q. Would that be in the inbound
6 lane?

7 A. Yes.

8 Q. Okay. But the car's in the
9 outbound lane; isn't that right?

10 A. It had traveled back into the
11 inbound lane, once ---. It went
12 around me, back into the inbound lane.

13 Q. Well, it went past you? It
14 didn't go around you; did it?

15 ATTORNEY CAMPBELL:

16 Object to the form of
17 the question.

18 BY ATTORNEY LEWIS:

19 Q. How did it go around you, if it
20 was in the outbound lane and you were
21 in the inbound lane? How did it go
22 around you?

23 A. When the vehicle was traveling
24 at me, it was traveling at me towards
25 the inbound lane.

1 Q. He was going to travel into the
2 inbound lane?

3 A. Yes.

4 Q. So did he ever get into the
5 inbound lane?

6 A. After it passed me.

7 Q. After he passed you?

8 A. Yes.

9 Q. How far past was he, when he
10 got into the inbound lane?

11 A. I don't know.

12 Q. You saw him all the way down to
13 the 16th Street; didn't you?

14 A. Well, distance-wise, I don't
15 know. It was approximately --- he got
16 back into the inbound lane, right near
17 16th and East Carson.

18 Q. Okay. So, he's going from 17th
19 Street to 16th Street in the outbound
20 lane or the other lane from which you
21 were standing? Is that right?

22 A. Yes.

23 Q. What happened to the car at
24 16th Street?

25 A. It continued traveling inbound.

1 standing next to the front door, the
2 front entrance of Diesel. It would
3 have been to our right, the entrance.
4 And then we had heard that --- or
5 Channel Two dispatch was advising City
6 units that there was a --- I believe
7 it was Homestead or West Homestead was
8 involved in a pursuit, which was
9 traveling inbound on, I think the name
10 of the road is River Road. I don't
11 remember.

12 And they continually updated
13 the location of the pursuit of the
14 vehicle. At one point, it stated it
15 was crossing over --- I think it's
16 Becks Run Road, is the name of the
17 road, continuing inbound. And then
18 when it reached the, I want to say it
19 was the FBI Building, is what it was
20 put out earlier, that's when I
21 remember hearing 3380, whoever that
22 was that night --- which would have
23 been the supervisor, terminated the
24 pursuit.

25 Q. You heard that?

1 Homestead vehicles and the crash ---?

2 A. Yes.

3 Q. There were crash vehicles?

4 Okay. At the time of this incident,
5 were you familiar with policies
6 regarding the discharge of firearms
7 toward motor vehicles that were
8 occupied?

9 A. I do, but I don't know the
10 exact policy? But I was aware of a
11 policy, yes.

12 Q. Did you know what the policy
13 was?

14 A. I believe it stated something
15 along the lines of a motor vehicle has
16 to be being used as a weapon in order
17 to use deadly force on the
18 occupants ---

19 Q. Okay.

20 A. --- on the driver, I mean.

21 Q. Okay. Are you aware of anybody
22 that ---? Did any of the officers
23 that were involved in this incident,
24 did any of them ever discuss with you
25 whether they discharged their weapons?

1 Did they ever discuss that with you?

2 A. That night, they may have. I
3 don't really see many of them, because
4 I'm not assigned to the same unit.

5 Q. That night, they might have?

6 A. Uh-huh (yes).

7 Q. The officers, I'm going to name
8 them each one. You can tell me what
9 you recall. Officer Kennedy? Did he
10 tell you that he discharged his
11 weapon?

12 A. I don't remember. I remember
13 speaking with him. I don't remember
14 the contents of the conversation.

15 Q. Do you remember speaking to him
16 at the narcotics office, while you
17 were waiting to be interviewed by the
18 homicide detectives and the DA?

19 A. I remember speaking with him
20 there, yes.

21 Q. Okay. Do you remember speaking
22 with Officer Gorecki?

23 A. Yes.

24 Q. Did you remember saying ---?
25 Excuse me, do you remember Officer

1 Gorecki telling you that he shot twice
2 through the driver's side window?

3 A. No.

4 Q. Do you remember what he told
5 you?

6 A. No.

7 Q. Do you recall what Sergeant
8 Matakovich ---?

9 A. Matakovich (corrects
10 pronunciation).

11 Q. Do you remember what, if
12 anything, he said to you?

13 A. No. I remember speaking with
14 him. Like, once again, but I don't
15 remember exactly what was said.

16 Q. Sergeant Matakovich?

17 A. Matakovich (corrects
18 pronunciation).

19 ATTORNEY HAMILTON:

20 Matakovich (corrects
21 pronunciation).

22 OFF RECORD DISCUSSION

23 BY ATTORNEY LEWIS:

24 Q. Did Sergeant Matakovich say to
25 you that the City's policy regarding

1 firing at occupied vehicles is
2 something that doesn't make sense or
3 he's not going to follow? Did he say
4 that to you?

5 A. I don't remember.

6 Q. When you made your decision to
7 shoot at this vehicle, at any time
8 prior to that or at the time that you
9 shot, did the City's policy even come
10 into your mind?

11 A. No.

12 Q. You've already testified that
13 you shot at the driver's, what you
14 believe to be his chest?

15 A. Yes.

16 Q. Is that correct? Have you ever
17 been involved in any collisions with a
18 police vehicle?

19 A. Yes.

20 Q. Accidents involving ---

21 A. Yes.

22 Q. --- personal injury?

23 A. I don't ---. Meaning, I was
24 injured or ---?

25 Q. Anybody involved in the

1 A. Approximately, six years. Yes.

2 Q. When did you complete your
3 Academy training?

4 A. It was approximately March of
5 2008

6 Q. Okay. So it would appear that
7 your only experience as a licensed
8 uniform police officer is that for the
9 City of Pittsburgh?

10 A. Yes.

11 Q. How old are you, sir?

12 A. Thirty-seven (37).

13 Q. Prior to becoming a police
14 officer, what was your occupation?

15 A. I was a heavy equipment
16 mechanic at OK Grocery.

17 Q. Now, as I understand it, on the
18 night, early morning hours of the
19 incident which gives rise to this
20 lawsuit, when you first saw the Burris
21 vehicle, you were standing in ---
22 close to the middle of East Carson
23 Street?

24 ATTORNEY LEWIS:

25 Objection. He didn't

1 say close to the middle. He
2 said he was standing in the
3 inbound lane, about two or
4 three feet from the center
5 line.

6 ATTORNEY HAMILTON:

7 That's close to the
8 middle.

9 ATTORNEY LEWIS:

10 Okay.

11 ATTORNEY HAMILTON:

12 Okay.

13 ATTORNEY LEWIS:

14 Well, you ought to go
15 down there and look at it.

16 BY ATTORNEY HAMILTON:

17 Q. You're standing in the inbound
18 lane of East Carson Street?

19 A. Yes.

20 Q. At its intersection with 17th
21 Street?

22 A. Yes.

23 Q. Okay. And you're facing
24 outbound?

25 A. Yes.

1 Q. Okay. And when you first see
2 the Burris vehicle --- and if you have
3 to look at any of these exhibits, take
4 your time, pull them over and look at
5 them. But when you first see the
6 Burris vehicle, it's about 25 yards in
7 front of you?

8 A. Approximately, yes.

9 Q. Okay. Headed toward you?

10 A. Yes.

11 Q. And it's headed toward you in
12 the outbound lane?

13 A. Yes.

14 Q. Okay. Any other vehicles at
15 the time of that observation did you
16 observe also in the outbound lane?

17 A. No.

18 Q. Okay. Now, you said the
19 traffic headed inbound on East Carson,
20 at the intersection of 17th was
21 stopped at that intersection; correct?

22 A. Yes.

23 Q. You had stopped it?

24 A. Yes.

25 Q. Okay. At the time you first

1 saw the Burris vehicle, can you give
2 me an estimate, or as exactly as you
3 can, how many vehicles you recall
4 being stopped in the inbound lane of
5 East Carson Street?

6 A. As far as I can see.

7 Q. Would that take then, if you
8 know, beyond the intersection with
9 18th?

10 A. Do you mean was the vehicles
11 stopped that far?

12 Q. Uh-huh (yes).

13 A. I don't know. I couldn't see
14 that far. I'm short. It's hard for
15 me to see over the top of cars.

16 Q. Yes. Is there a traffic light
17 up at 18th?

18 A. I think so, yes.

19 Q. Do you recall if, you know, you
20 saw it as you're visualizing this
21 scene from where you were standing at
22 17th?

23 A. I don't remember seeing it, no.

24 Q. Do you actually remember the
25 Burris vehicle actually pulling out